



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R05-RCRA-2021-0389; FRL-9191-01-R5]

Michigan: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Michigan has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Michigan's application and has determined that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State's changes. EPA seeks public comment prior to taking final action.

DATES: Comments must be received on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-mail:* Mullins.Angela@epa.gov
- *Instructions:* EPA must receive your comments by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Direct your comments to Docket ID Number EPA-R05-RCRA-2021-0389.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit

information that you consider to be CBI or otherwise protected through www.regulations.gov, or e-mail. The federal www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA’s public docket, visit the EPA Docket Center homepage at www.epa.gov/epahome/dockets.htm).

Docket: All documents in the docket are listed in the www.regulations.gov, index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov, or in hard copy.

FOR FURTHER INFORMATION CONTACT: Angela Mullins, RCRA C&D Section, Land, Chemicals, and Redevelopment Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, LL-17J, Chicago, IL 60604. Angela Mullins can be reached by telephone at (312) 886-4237 or via email at mullins.angela@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with,

and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in Michigan including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has EPA made in this rule?

On April 8, 2021, Michigan submitted a complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between January 13, 2015 and January 3, 2018 (also known as RCRA Clusters XXV and XXVI). EPA concludes that Michigan's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Michigan final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section G of this document.

Michigan has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this proposed authorization decision?

If Michigan is authorized for the changes described in Michigan's authorization

application, these changes will become part of the authorized State hazardous waste program and will therefore be federally enforceable. Michigan will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations which EPA is proposing to authorize Michigan are already effective under state law and are not changed by this proposed action.

D. What happens if EPA receives comments that oppose this action?

If EPA receives comments on this proposed action, we will address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

E. What Has Michigan Previously Been Authorized for?

Michigan initially received final authorization on October 16, 1986, effective October 30, 1986 (51 FR 36804-36805), to implement the RCRA hazardous waste management program. We granted authorization for changes to Michigan's program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on January 24, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996, effective April 8, 1996 (61 FR 4742); on November 14, 1997, effective November 14, 1997 (62 FR 61775); on March 2, 1999, effective June 1, 1999 (64 FR 10111); on July 31, 2002, effective July 31, 2002 (67 FR 49617); on March 9, 2006, effective March 9, 2006 (71 FR 12141); on January 7, 2008 (73 FR 1077), effective January 7, 2008; on March 2, 2010, effective March 2, 2010 (75 FR 9345); on August

28, 2015 (80 FR 52194), effective August 28, 2015; and on June 6, 2019 (84 FR 26359), effective June 6, 2019.

F. What changes are we proposing with this action?

On April 8, 2021, Michigan submitted a final complete program revision application, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. EPA proposes to determine, subject to receipt of written comments that oppose this action, that Michigan’s hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, EPA is proposing to authorize Michigan for the following program changes:

TABLE 1: AUTHORIZED MICHIGAN PROGRAM CHANGES

Description of Federal Requirement and Revision Checklist Number¹	<i>Federal Register</i> date and page (and/or RCRA statutory authority)	Analogous State Authority (MAC R 299.***, effective August 3, 2020, unless otherwise specified)
Changes affecting all non-waste determinations and variances, Checklist 233A-2	January 13, 2015, 80 FR 1694 May 30, 2018, 83 FR 24664	9202(7), 11003(1), 9202(8), effective April 5, 2017
Legitimacy-related provisions, including prohibition of sham recycling, and definitions of legitimacy and contained, checklist 233B-2	January 13, 2015, 80 FR 1694 May 30, 2018, 83 FR 24664	9102(t), 9104(d), 9232(1), 9232(2), 9202(1), and 9107(v), effective April 5, 2017
2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule and 2018 DSW final rule, checklist 233D2-2 ²	January 13, 2015, 80 FR 1694 May 30, 2018, 83 FR 24664	92013(v), 9104(e) and (bb), 9105(b), 9108(h), 9202(1), (6) and (7), 11003(1), 9107 (b), 9204(1), 9201(1), 9234(1), and 9519(5), effective April 5, 2017
Imports and Exports of Hazardous Waste, Checklist	November 28, 2016, 81 FR 85696	9101(s), 9103(a), 9107(c), 11001(7), 9204(4) and (6), 9206(3) and (6),

¹ Revision Checklists generally reflect changes to Federal regulations pursuant to a particular *Federal Register* document; EPA publishes these checklists as aids to states to use for development of their authorization revision application. See EPA’s RCRA State Authorization website at <https://www.epa.gov/epawaste/laws-regs/state/index.htm>.

² Original rule authorized on June 6, 2019. Court decisions from September 2018 were not included in original authorization. Checklist 233D2 is being resubmitted to include impacted sections.

236		9231(1) and (7), 11003(1) and (2), 9301(7), 9308(7), 9312(3), 9309, 9310, 9314(1) and (2), 9401(5), 9409(1) and (5), 9605(1) and (4), 9608(1), (4), and (12), 9601(3) and (9), 9803(2), 9804(7)-(11), 9228(4), (5), (6), (7), (10) and (11)
Hazardous Waste Generator Rule Improvements Checklist 237	November 28, 2016, 81 FR 85730	9101(o), 9102(d) and (n), 9105(h), (dd), 9107(z), 9109(ii), 11002, 9201, 9107(r), 9205, 9205(1), 9206(1)(c), 9214(2)-(4), 9234(1) and (2), 11003(1) and (2), 9104(s), 9301(1), (2), (3), (7), (9), and (10), 9302(1), (2), (3), and (7), 9311(1) and (7), 9303(1)-(8), 9304(1) – (3), 9305(1) – (4), 9306(1) – (5), 9307(1) – (7), 9308(1) – (7), 9309, 9310(1) and (2), 9311(1)-(3) and (5)-(7), 9312(1)-(3) and (7), 9315(1)-(3), 9316(1)-(7), 9103, 9106, 9109, 9401(1), 9404(1), 9503(1)(a) and (b), 9605(1) and (4), 9608(3), 9610(1), 9614(1) and (2), 9615(1) and (7), 9631(1) and (2), 9634(1) and (2), 9503(1)(a) and (b), 9601(1), (2), (3), and (9), 9804, 9822(13), 9313(1) and (2), 9413(1) and (2), 9627(1) and (2), 9519, 9229(3), 9229(2), 9809(1)(a)
Confidentiality Determinations for Hazardous Waste Export and Import Documents, Checklist 238	December 26, 2017 82 FR 60894	9231(1) and (7), 11103(1) and (2), 9314(1)-(3)
Hazardous Waste Electric Manifest User Fee Rule, Checklist 239	January 3, 2018, 83 FR 420	9601(3) and (9), 9608(1), (9), (14), and (15), 11003(1) and (2), 9309(1) and (6), 9409(1) and (5), 9634(1) and (2)

TABLE 2: EQUIVALENT STATE-INITIATED CHANGES

Michigan administrative rules (MAC R 299.*** unless otherwise specified)	Effective date of amended State requirement
9103(i) (definition of “EPA Acknowledgement of Consent (AOC)”, 9106(s) (definition of “Primary exporter”), 9228, 9314, 9405(2)(f) and (3)(d), 9511(5)(b), 9608(4),	February 21, 2021

G. Which Revised State Rules Are Different from the Federal Rules?

When revised state rules differ from the Federal rules in the RCRA state authorization

process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to Section 3009 of RCRA, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive Federal authorization for such regulations, and they are not federally enforceable.

EPA considers the following Michigan requirements to be more stringent than the Federal requirements:

Michigan does not adopt standardized permits, making the State requirements more stringent than the Federal requirement at 40 CFR 267.71(a)(4)-(6)(i) and (ii), (c), (d); and 267.1(a).

Michigan does not allow containment buildings, making its State requirements more stringent than the Federal requirements at 40 CFR 262.16(b)(4)(iii)(B), (5)(i) and (ii)(A) through (C), (6)(i) and (ii)(A) through (D), (7), and (8)(i) through (vi); 262.17(a)(3)(iii)(A) and (B), (4)(i) and (ii)(A) through (C), (5)(i)(B) and (ii)(B), (8)(i)(B), (c)(4)(i)(C)(1) and (2), and (iv)(B).

Michigan's rules at R 299.9304(1)(e)(xii)(B), R 299.9305(1)(e)(B), R 299.9316(2)(e)(i)(B)(2), R 299.9316(2)(e)(i)(B)(2), R 299.9316(3)(e)(i) (B)(2), and R 299.9316(3)(e) (ii)(B) (2) are more stringent than the Federal analogs at 40 CFR 262.14(a)(5)(viii)(B)(2), 232.15(a)(5)(ii), 262.232(a)(4)(i)(B), 262.232(a)(4)(ii)(B), 262.232(b)(4)(i) (B), 262.232(b)(4)(ii) (B), and 268.50(a)(1) since the State's rulings include the requirement of labeling each container with a description of the waste or the hazardous waste number while the Federal rule only requires an indication of the hazards of the contents. These requirements would become part of Michigan's authorized program and would be federally enforceable.

EPA also considers the following State requirements go beyond the scope of the Federal

program:

Michigan's rules at R 299.9214(3) and (4) are broader in scope than the Federal analog at 40 CFR 261.33(f) with respect to the chemicals listed in table 205c that are not included in Federal regulations. This expands the number of chemicals listed as toxic wastes by the rule. Broader-in-scope requirements do not become part of the authorized program and EPA cannot enforce them. Although regulated entities must comply with these requirements in accordance with State law, they are not RCRA requirements.

H. Who Handles Permits After Final Authorization Takes Effect?

When the final authorization takes effect, Michigan will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of the proposed authorization until they expire or are terminated. EPA will not issue any more new permits or new portions of permits for the provisions listed in Table 1 after the effective date of the final authorization. EPA will continue to implement and issue permits for HSWA requirements for which Michigan is not yet authorized. EPA has the authority to enforce state-issued permits after the State is authorized.

I. How Does This Action Affect Indian Country (18 U.S.C. 1151) in Michigan?

Michigan is not authorized to carry out its hazardous waste program in Indian Country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Michigan;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation, that qualifies as Indian Country.

Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these

lands. It is EPA's long-standing position that the term "Indian lands" used in past Michigan hazardous waste approvals is synonymous with the term "Indian Country." Washington Dep't of Ecology v. U.S. EPA, 752 F.2d 1465, 1467, n.1 (9th Cir. 1985). See 40 CFR 144.3 and 258.2.

J. What Is Codification and Is EPA Codifying Michigan's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing citations and references to a state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized state rules in 40 CFR part 272. EPA previously codified Michigan's rules up to and including those revised October 19, 1991 effective April 24, 1989 (54 FR 7421, February 21, 1989); as amended effective March 31, 1992 (57 FR 3724, January 31, 1992). EPA is not proposing to codify the authorization of Michigan's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart X, for the authorization of Michigan's program changes at a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This authorization is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this proposed authorization of Michigan's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that

required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rulemaking, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the “Attorney General’s Supplemental Guidelines

for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental Protection; Administrative Practice and Procedure; Confidential Business Information; Hazardous Materials transportation; Hazardous Waste; Indian lands; Intergovernmental Relations; Penalties; Reporting, and Recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 3, 2021.

Debra Shore,

Regional Administrator, Region 5.

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